

A School Controversy:  
The Amish vs. American Educational Authorities:  
The Yoder Case  
(アーミッシュとアメリカの  
教育当局における衝突 — ヨーダー判決)

Mami Hiraike Okawara\*

**SUMMARY IN JAPANESE:** 本論文では、1914年から1972年までのアーミッシュと当局側の教育衝突を、アーミッシュ側勝訴に終わった合衆国最高裁判所のヨーダー判決を中心に考察する。まず、この世的なものを忌避するというアーミッシュの宗教理念に基づいた教育観について論じる。次に、20世紀になって変貌したアメリカの教育制度（近代的教育設備を備えた中規模学区制の小学校教育、義務教育期間の延長等）とアーミッシュの教育観の隔たりを見ていき、両者の間で繰り返された教育衝突を考察する。最後に、ヨーダー判決の経緯と、従来はアーミッシュ側敗訴に終わることが多かった教育衝突で、ヨーダー判決が勝訴になった背景として、非アーミッシュのアーミッシュの宗教理念を尊重したアーミッシュ支持の訴訟方法、および、アメリカ司法界の宗教論争に関する解釈の変化について論じる。

---

\* 大河原眞美, Associate Professor of American Studies, Takasaki City University of Economics, Gunma

## Historical Background

Many Japanese who have seen the movie 'Witness' are surprised to find that there exists a group of people, called the Amish, who preserve an 18th Century lifestyle in present-day America. These people do not use electricity or telephones. They use horse-drawn buggies instead of cars. The men grow beards and wear wide-brimmed black hats and suspenders. The women cover their heads with white caps and wear long-sleeved dresses. The peculiar group of people shown in the movie are called 'Old Order Amish.' Hostetler defines the Old Order Amish as the congregations of Amish who 'favored the old traditions unchanged as much as possible.'<sup>1</sup>

There is another more liberal group of Amish, called 'Beachy Amish,' who separated from the Old Order Amish in 1927. The Beachy Amish use automobiles and electricity, but maintain relatively conservative dress standards. Another group of Amish, called 'New Order Amish,' emerged from the Old Order Amish in 1966. The New Order Amish have a milder discipline than the Old Order Amish in terms of the use of telephones, electricity, and tractors, but continue to retain some of the old traditions such as 'worship in private homes' and 'the use of buggies'. This is not practiced by the Beachy Amish, however. Differing from the Old Order Amish, both the Beachy Amish and the New Order Amish claim to emphasize renewed spiritual life. On the other hand, Gross explains that at the center of the Old Order Amish faith lies 'the desire and aim to live simply and in peace with one another'.<sup>2</sup> 'Getting along with one another' in human weakness is a primary tenet of the Old Order Amish. The Amish can therefore be perceived to be various Amish groups of different levels of discipline and slightly different beliefs, but all Amish groups share the traditional Mennonite heritage.

The Amish themselves emerged from the Mennonites around 1693. The Mennonites can be traced back to the Anabaptist movement which began in Switzerland in 1525. The Anabaptists viewed the Reformation movement as a compromise with the secular world, and advocated adult baptism and a common life separated from the secular world. Although the Anabaptist movement spread rapidly into many parts of western Europe, there was no united Anabaptist denomination. An ex-Catholic priest named Menno Simons

organized the Anabaptists in Holland in 1536. The Dutch Anabaptist group came to be called Mennonites, taking the name from Menno Simons. The term 'Mennonite' was later applied to other different Anabaptist groups such as the Anabaptists in Switzerland (the Swiss Brethren). The Mennonites renounced Catholicism and the magisterial reformers, and consequently faced severe persecution. Although the Mennonites developed strong communities, there were methods of excommunication to those who erred and these varied among the groups. Some groups practiced the *Meidung* (shunning and social avoidance), while others showed a more tolerant attitude toward the person who transgressed.

Jacob Ammann, a Swiss Mennonite (Swiss Brethren) elder, moved to Alsace (France) from Switzerland and found that the Mennonites in Alsace and the Palatinate (the Rheinland-Pfalz in Germany) were threatened by the 'world.' Jacob Ammann was convinced that he had to implement a strict observance of biblical teachings as he understood them. In order to accomplish his aim, he first went to the Mennonite congregations near Bern in Switzerland (Swiss Brethren), where he experienced a much milder practice of church discipline. Jacob Ammann demanded a much stricter interpretation of the Bible: devout Christians should maintain a strict observance of communion, footwashing, and *Meidung*. Jacob Ammann and the dissenting congregation near Berne made no concessions. In 1693 Ammann separated from the Mennonites. Ammann returned to Alsace, and his 'Ammann-ish' faction in Alsace and the Palatinate came to be called 'Amish.' The Amish have advocated a strict observance of the biblical manner of life and have practiced this simple style ever since.

## **Amish Faith and Education**

### **1. The Core Values of Amish Society**

Some core values of Amish society include six themes: maintaining a redemptive community; separation from the World; voluntary adult baptism; *Ordnung* (the church-community discipline); *Meidung*; and closeness to the soil and nature.<sup>3</sup>

The Amish feel obligated to reciprocate the gift of God's son who was sent to the world for redemption, by offering in return a godly community. The

individual in this godly community is expected to be humble, nonresistant, obedient to the will of God, and is expected to show love for community rather than for self.

The Amish concept of separation is conditioned by Christian dualism: 'the kingdom of God' and 'a Satanic kingdom.' The Amish view themselves as the 'chosen people' who are obedient to God and who live in the kingdom of God. The Amish therefore do not desire contact with the outside world, a Satanic kingdom, so that they can keep themselves 'purified.'

The Amish reject infant baptism because children by definition cannot consciously respond, positively or negatively, to the Christian faith and practice. Young Amish people are baptized in late adolescence and are then accepted as adult church members.

All baptized church members are committed to observing the *Ordnung*. The *Ordnung* varies among churches, but certain universal rules are shared by each group of Amish. For example, telephones, electricity, and automobiles are forbidden, and beards for married men and long hair for women are required in the *Ordnung* of the Old Order Amish. In 1966 the New Order movement started, proposing a different *Ordnung*. A strict moral standard on smoking tobacco and courtship practices was applied and the use of some technology was introduced.

The *Bann* (excommunication) indicates that those who do not follow the *Ordnung* should be excluded from the communion, i.e. religious relationships. The *Meidung* includes shunning not only during times of worship, but also in social relationships, including meal times. If an excommunicated person is married, the spouse must suspend his or her marital relations until that person is readmitted into the church.

The Amish split from the Mennonites over the issue of the *Meidung*, and because of the *Meidung* in 1927 a more progressive Amish group, the Beachy Amish, separated from the Old Order Amish. The Amish do not make direct efforts to evangelize for new members. Instead, their primary concern is to keep the church pure and prevent members from transgressing. Thus, the Amish have experienced and will continue to experience more splits among themselves over issues such as *Meidung*.

In Europe, the Amish were pushed back to rural areas to escape from persecution. Amish communities thus became completely agrarian in character. After they migrated to America, the Amish made an effort to

maintain an agrarian community to protect themselves, not from persecution, but from the influence of industrialization and the secular world. Rural life remains an important core value of Amish society.

## **2. The Goal of Amish Education**

The goal of education for the Amish is the cultivation of humility, simple living, and resignation to the will of God. Eli E. Gingerich, an Old Order Amishman, stated his views on education based on the Amish faith as follows.<sup>4</sup>

We feel the importance of child training. Train a child in the way he should go, and when he is old he will not depart from it. Obedience and respect of authority must be taught at home. As time goes on, more and more need is felt for having our own Amish schools. The home, the church and the school should teach the same things. The primary goal for the Amish schools is humility and cooperation, whereas the goal for public schools is competition and pride of achievement.

Elementary schooling by itself seems to be sufficient for developing skills and personality within the Amish community. The 'three R's' namely, reading, writing, arithmetic, and the moral training of teaching of the Bible are considered by the Amish to be a sufficient education.

The Amish are opposed to 'higher education.' Their formal objection to higher education is based on the biblical passage, I Cor. 3:19, that is, the threat of worldly wisdom. Their informal objections are understandable in the light of the Amish desire to maintain traditional rural communities, including the need for children to work on the farm and in the home. The teen years are important in which Amish children are instilled with values and attitudes needed for their strong faith and tradition. If the children of these age groups were not educated in the Amish way, the community would lose its next generation of Amish. The community also needs the physical help of high-school-age children. An Amish elementary school which is located in the community satisfies their belief that the church, the home, and the school teach the same thing. Therefore, elementary schooling is sufficient for their formal education.

In present-day America the Amish view towards education is very

distinctive. Until the 19th Century the Mennonites, however, shared much the same view towards education as secular society. The Mennonites also believed that elementary education was all that was necessary for their way of life and higher education was inimical to the religion. Not only Anabaptists but also other non-Anabaptists in rural areas, though not necessarily for religious reasons, were sufficiently happy to send their children to a one-room public elementary school in the neighborhood before the turn of the century. In those days the Amish also assisted the school management by serving as school-board members, even though some worldly subjects such as science, or some worldly equipment such as central-heating or lighting apparatus, were used in the public schools. The public school in the 19th century stood midway between the Amish and the secular world.

### School Controversy

After the Great Depression (1929 and following) compulsory school-attendance ages were raised in many states in an effort to provide more jobs to older workers by keeping young teenagers in school. As the rural population increased, one-room public schools could not accommodate the growing number of students. A large consolidation of schools was introduced with six arguments in favor of the system: (1) the equalization of costs between financially favorable districts and unfavorable ones; (2) better teachers; (3) superior criteria; (4) specialization of instruction and grading of pupils by age groups; (5) social advantages to pupils and to the community; (6) better administration and superior vision.<sup>5</sup> The Amish are in favor of none of these six arguments because the children attending consolidated schools would be under the care of the mainstream values rather than their traditional faith. Such consolidated schools were usually located far away from the Amish community. In order to commute, the Amish children would be forced to take public-school bus transportation, which is against the *Ordnung*. In addition, under the consolidation program, Amish parents would not be able to influence the school management any more directly. Consolidation was thus a real threat to the Amish community.

The first recorded conflict between the Amish and school authorities occurred in Geauga County, Ohio.<sup>6</sup> In Ohio all children are required to attend

high school until the age of 16. In 1914 three Amish fathers were fined because their children under the age of 16 did not attend high school after the completion of the eighth grade. In 1922 five Amish fathers were arrested because they told their children not to study unnecessary subjects for the Amish such as history, geography, and hygiene. In 1926 County Superintendent Frank Schofield solved the conflict by permitting Amish children to attend school until the eighth grade or the age of 16.

The laws in various states—more precisely in various townships—regarding the public control of private schools, showed a lack of uniformity. Some states like South Carolina, New York, Illinois, Missouri, Delaware, and Maryland showed a tolerant attitude towards the Amish schools. However, the Amish faced intolerance from school authorities in other states such as Ohio, Pennsylvania, Indiana, Kentucky, Arkansas, Kansas, and Wisconsin. The parents who did not observe the public school requirements were fined or jailed in those states. Many Amish moved to more tolerant states. Some Amish left the United States, emigrating all the way to Mexico or to Honduras. Moving to some new places as a means to maintain their faith and life is a traditional Amish way. Emigration had been carried out in Europe under severe persecution.

The Amish who did not move to new places considered various means to maintain education suitable to themselves. First, they founded their own schools: the first one was in Delaware in 1925, and the second one in Pennsylvania in 1938. After that, the number of Amish schools gradually increased. Instead of sending children to consolidated schools, the Amish parents educated their youth at their own schools. Second, some Amish children repeated some grades to meet the requirements of the compulsory educational systems. Third, work permits were used. A work permit counts some work at home as a part of compulsory education. Fourth, some Amish children took accredited home correspondence courses. In these ways, Amish children were able to stay in their community and still fulfill the state requirements of compulsory education. However, the school authorities in some counties in Ohio, Iowa, and Kansas did not accept Amish schools or Amish teachers as certified. Some Amish in these counties were brought to trial.

## **Social Background**

### **1. Local communities**

Many local people, including school authorities, showed a lack of understanding toward Amish education. Furthermore, antagonism toward the Amish was observed.<sup>7</sup> Part of the antagonism resulted from the fact that the self-sufficiency of the Amish contributed to fewer local purchases.<sup>8</sup> Local people, furthermore, believed that the Amish refusal to employ certified teachers at their schools resulted from economic reasons rather than religious ones.<sup>9</sup> Also, local school authorities were extremely concerned about using enrollment as a means to increase state aid.<sup>10</sup> The number of Amish students in an Amish school reflected a loss of government subsidies for the public schools. Some local authorities forced Amish children to attend the public schools, not even trying to understand the core of Amish education.

There also existed a rather negative view, indifference at most, toward people living away from mainstream society. First, Amish, being Pennsylvania German-speakers, were regarded as 'unpatriotic' in the 1940s and early 1950s because Germany was a hostile country in the Second World War. After the negative view toward German Americans lessened, indifference toward the Amish, not a growing interest, seemed to have prevailed in the local community.<sup>11</sup>

The local people were not solely responsible for the misunderstanding concerning Amish education. The Amish themselves had never promoted an understanding between the local people and themselves due to their core value of 'separation from the World.' Local people were not informed of the Amish way of raising children based on the Amish faith. Many local people simply believed that the Amish were uncooperative and stubborn in their opposing modern education.

### **2. The conflict between church and state**

The conflict between the Amish and school authorities involved one constitutional claim: the Free Exercise Clause of the First Amendment. The state has often been the winner in the issue of church and state when the 'freedom to act' is distinguished from 'freedom to believe.' Some court



rulings held that only religious belief is protected under the constitution, and that religious practices may legally be restricted.

In *Reynolds v. United States* (1878), for example, the United States Supreme Court overrode the Mormon's claim of polygamy on the ground that polygamy was an odious practice in western countries. The court acknowledged the religious belief of Mormons but forbade the religious action which was considered anti-social. The distinction between religious belief and religious action was made in the interpretation of religious freedom.

The United States Supreme Court decided in *Pierce v. Society of Sisters* (1925) that an Oregon statute compelling attendance of a public school unreasonably interfered with the right of every parent to educate his child in a certified church-oriented school. The traditional interest of parents to rear their children under their control is protected under the Constitution only when a state law bears no valid interest. This ruling indicates that school attendance laws which bear valid public interest are therefore recognized as valid and cannot be applied as a supportive case for the Amish.

The United States Supreme Court upheld the conviction of a Jehovah's Witness in *Prince v. Massachusetts* (1944). A Jehovah's witness father who allowed his child to sell the *Watchtower* magazine as missionary work was convicted of being in violation of the state child labor statute. The court restricted the parental decision to practice religion freely by guarding the health and safety of the child. Since this case supports the overriding interest of the state over parental decision, the state advanced its argument to support the compulsory attendance law in terms of the welfare of the child in the legal cases against the Amish.

The United States Supreme Court applied the distinction between religious belief and religious action in *Braunfeld v. Brown* (1961). The Orthodox Jewish merchants who closed on Saturdays because of their religious beliefs attacked the Pennsylvania Sunday closing law on the grounds that the law would cause a loss to business because of two consecutive holidays or that the law would threaten the free exercise of their religion. The court found that the Pennsylvania Sunday closing law bore a valid purpose in establishing a uniform holiday in the state and that the law did not infringe on religious belief but that it did restrict religious actions and caused some financial loss. The Free Exercise of the First Amendment was thus recognized under the dichotomy between religious action and religious belief.

In *Sherbert v. Verner* (1963) the United States Supreme Court recognized the balance between the state interest and the interest of a religious minority. A Seventh Day Adventist woman was fired by her employer because she refused to work on Saturday because of her religious beliefs. Upon her request for unemployment compensation, South Carolina denied state unemployment compensation benefits on the grounds that she did not accept available and suitable employment with good reason. The court held that South Carolina unreasonably infringed on her practice of religion which did not threaten the state interest. In this ruling 'the freedom to act' was found to be protected by the Constitution unless the free exercise infringed on a valid state purpose.

### **Earlier Court Rulings on the School Controversy**

The Amish religion forbids litigation in the courts. However, Amish people were forced to be present in court. Especially in the school controversy, many Amish fathers were arrested and tried in court. Most of them were convicted by the law. Some Amish reluctantly appealed against the rulings, only to find that the former rulings were upheld. In this section, I will briefly review some court rulings of the Amish concerning the school controversy and present these rulings as the legal climate of the school controversy before *Wisconsin v. Yoder*.

One of the few court decisions in favor of the Amish was *Commonwealth v. Peterheim* (1949). Four Amish fathers were convicted of violating the Pennsylvania school attendance law because they did not send their children, over 14 but under 16, to public high school. The Amish fathers appealed to the Somerset County Court. In the county court the Amish asserted that the Pennsylvania school attendance law was not applicable to their children of 15 years and upward at that time and that their engagement on the farm and in the home made them entitled to a work permit.<sup>12</sup> The Amish were given a favorable court decision. The court ruling, however, was based not on an understanding of the importance of Amish education for their religious faith, but on the application of the 14th Amendment. The court held that the enforcement of the compulsory attendance law would constitute an infringement of the constitutional rights of religious liberty. Since the effect of Amish education was not realized in this court ruling, subsequent court rulings

regarding the school controversy were reversed against the Amish when the courts saw no direct infringement of the religious liberty of the Amish.

Two years after the *Peterheim* case, two Amish fathers were again convicted of violating the Pennsylvania compulsory attendance law on the grounds that their children, after the completion of the eighth grade, did not attend public high school. On appeal to the Pennsylvania Superior Court the Amish lost the case of *Commonwealth v. Bailer* (1951). The Superior Court did not refer to the Peterheim case and held that the state interest was more paramount than the right of parents of religious convictions to refuse advanced education. This court referred to the *Reynolds* case and the *Prince* case, and held the traditional position of the separation of religious belief from religious action.

The Amish again lost in *State v. Hershberger* (1955). In Hardin County, Ohio, John P. Hershberger and other Amish established an Amish private elementary school which was a one-room school devoid of electricity and central heating. A teacher who had completed only eighth grade education taught all eight grades in this Amish school. In this court ruling, the discrepancy between the public school and the Amish school alone was emphasized. The Ohio Court of Appeals found that no religious question was involved because the appellant was free to worship as he pleased and to provide religious instruction for his children. The court then held that the instruction provided in this Amish school was not equivalent to that in the public schools. The court did not recognize that the Amish education was adequate for life in the Amish community. John P. Hershberger was fined \$20 and was ordered to post a \$100 bond with the promise to ensure compliance with the compulsory education law.

In the spring of 1965 the Kansas legislature raised the school-leaving age from 14 to 16. In the fall of 1965 Sharon Garber, under 16, did not attend a public high school after the completion of the eighth grade. Since Sharon Garber had a desire for learning, she enrolled in an accredited Chicago correspondence school. She completed the four-year curriculum in 30 months and her grade percent average at this correspondence course was 95.69.<sup>13</sup> Erickson complimented Sharon Garber on her writing skill which appeared in her account 'Letter from Sharon,' *Family Life*, March, 1968.<sup>14</sup>

However, LeRoy Garber, Sharon's father, was served a notice of truancy. Following the advice of an attorney, E. Dexter Galloway, Sharon enrolled in an Amish vocational school in Reno County, the Harmony School. The

vocational instruction at Harmony School was modeled on a Pennsylvania training program.<sup>15</sup> In this school an Amish farmer taught formal vocational instruction one morning a week. The students were required to study an hour every day at home learning farm and home skills. They must submit reports on these activities to their teacher. LeRoy Garber, in spite of his daughter's enrollment in the vocational program, was arrested and taken to the district court.

LeRoy Garber did not use the best possible means for winning in the trial. E. Dexter Galloway was convinced that public sentiment in Reno County was so favorable that no jury would convict him. Garber, however, refused when E. Dexter Galloway asked for a jury trial. His refusal of a jury trial resulted from an aversion to publicity and from religious objections to juries. Garber said, 'I'd go to jail before I'd serve on a jury. I'm not going to judge anybody.'<sup>16</sup> Furthermore, LeRoy Garber did not even want to defend himself. No witnesses were called in the court. The trial was held between Dexter Galloway, Garber's lawyer, and Richard J. Rome, Reno County Attorney. Both submitted various facts that they had agreed on and then argued their cases before the judge. The district court found that both the accredited Chicago correspondence school and the Amish vocational school did not satisfy the statutory requirement of the school in Kansas. The court determined that LeRoy Garber did not comply with the Kansas compulsory school attendance law and thus violated the statute. Upon appeal, the Kansas Supreme Court reached an almost identical conclusion in *State v. Garber* (1967). The Kansas Supreme Court followed the precedents in distinguishing between 'freedom to believe' and 'freedom to practice' and held that the compulsory attendance law did not interfere with 'freedom to believe.' The court found that the state had an overriding interest in ensuring that its citizens were adequately educated, relying on *Prince v. Massachusetts*. Upon Garber's appeal sponsored by the American Civil Liberties Union and the National Committee for Amish Religious Freedom (NCARF)<sup>17</sup>, the United States Supreme Court refused to hear the decision of the Kansas Supreme Court against LeRoy Garber. Chief Justice Earl Warren, Justice William O. Douglas, and Justice Abe Fortas were in favor of accepting the case but they could not muster the needed fourth vote. LeRoy Garber paid the \$5 fine and \$64.25 in court costs imposed on him in the District Court of Reno County, Kansas. Garber left Kansas to rear the rest of his children, Galen (14 years

old), Ann (six years old), and John David (two years old) according to the Amish faith.

## **The Yoder Case**

### **1. The Amish Movement to Wisconsin**

It was 1963 when the Amish moved to the southern part of Wisconsin for the first time. Two reasons were given for this movement. The first was an economic reason resulting from a rise in land prices. As urbanization was advanced in Pennsylvania, Ohio, and Indiana in the 1950s and 1960s, land prices soared. This urbanization made it difficult for the Amish to purchase sufficient farm land for their large number of children in these states. A movement in search of cheaper land thus occurred. The second reason was the educational conflict. Since there were no minimum standards for teachers in private schools in Wisconsin at that time, some Amish families moved there. In 1968 there were 24 Amish families living in New Glarus, Green County, Wisconsin.<sup>18</sup>

Adin Yutzy was one of the Amish from Iowa. He was fined \$1,000 for his failure to comply with the compulsory school attendance law and sold his farm to pay the fine. He moved to New Glarus in 1967. It is very ironic that the Iowa legislature amended its school code to permit a religious group to apply for exemption from compliance with the educational standards law in 1967, right after Yutzy's move to Wisconsin.

### **2. The School Conflict**

The first Amish private school was established in New Glarus in 1963. In 1966 another Amish private school was founded near Medford. The Wisconsin superintendent of public instruction, Angus B. Rothwell, was disturbed by the qualifications of the Amish teacher, the school building devoid of electricity, and horseback transportation to school.<sup>19</sup> Rothwell warned that by 1970 all the children in Wisconsin would be required to complete high school or attend a vocational school until age 18 when he was asked about the requirements of Wisconsin school-teachers by the Amish in Iowa.<sup>20</sup> There was obviously a negative attitude toward the Amish among school authorities in Wisconsin.

In the spring of 1968 three Amish children, Frieda Yoder, aged 15, Barbara Miller, 15, and Vernon Yoder, 14, completed the eighth grade. Since the Wisconsin compulsory school attendance law required a child's school attendance until age 16, these Amish children expected to attend the first day of New Glarus high school on August 26, 1968. However, they stayed away from the high school as of October 23. Instead of a formal education in the secular world, the three Amish children took a vocational school type of education which was modeled on a Pennsylvania vocational training program: some German and English classes and work on the farm and in the home. They were, however, not enrolled in any certified private school, or within any recognized exception to the compulsory attendance law. The parents of the children were thus in violation of the Wisconsin statute. On a complaint from the New Glarus school superintendent, Kenneth J. Glewen, District Attorney L. A. Koenig filed against the three Amish fathers, Jonas Yoder, Adin Yutz, and Wallace Miller. Yoder and Yutz were members of the Old Order Amish and Miller was an Old Order Mennonite.<sup>21</sup>

The NCARF decided to defend the Wisconsin Amish. It is not easy to assist the Amish in legal procedures since asserting one's rights in court was considered a taboo in Amish society.<sup>22</sup> William C. Lindholm wrote to the Amish defendants and offered the aid of the NCARF. On November 12, 1968 the Amish school board wrote back to the NCARF and courteously declined its assistance. However, on December 19, 1968 the NCARF received a letter from Wallace Miller, the Old Order Mennonite defendant, to request support for the case. Lindholm drove to New Glarus and explained that the three Amish fathers were charged as criminals in the legal complaint and that the legal assistance which NCARF would offer was not violating the Amish prohibition, 'suing anyone.' Also, Lindholm further stated that the NCARF would raise the funds to carry this case. The number of Amish in New Glarus was so few that it was easy to consolidate the community to accept the legal assistance from the NCARF. The Wisconsin Amish permitted this case to be pursued to court.

Lindholm made the first phone call to William B. Ball, a constitutional lawyer in Pennsylvania who had often represented Catholic and other church-related schools, on December 24th, 1968. Since the courts had almost uniformly denied the Amish claim to be exempted from compulsory school attendance laws, both Lindholm and Ball had no confidence in winning the

case. Ball in a letter requested the Wisconsin state superintendent of public instruction, William C. Kahl, to approve the Amish private school under a clause in existing Wisconsin laws. Ball suggested that not filing this issue would be advisable to both sides.<sup>23</sup> However, in his reply, Kahl refused the attorney's request to approve the Amish vocational school. The case thus went to trial.

Ball thought of ways to win the case and hoped to use the 'freedom to practice' as his defense.<sup>24</sup> He reviewed many such cases. The case *State v. Garber* could not be applied because the Amish had lost in that one. So Ball decided to apply *Shervert v. Verner* which holds for the free exercise of religion as long as these religious actions were not outrageously practiced. However, the problem of his Wisconsin case was regarding a criminal statute, while *Shervert v. Verner* had been a civil case.

In order to win this case, Ball decided to prove three points: (1) the Amish faith is rooted in the Amish community; (2) Wisconsin compulsory education laws infringe on the free exercise of the Amish religion; (3) Amish exemption from high school would not cause any disadvantages to Wisconsin.<sup>25</sup>

### 3. Green County Court

The trial started in Green County Court in Monroe, Wisconsin, on April 2nd, 1969. One of the defendants, Adin Yutzy, left Wisconsin for Elsinoire, Missouri, before the trial was held. Yutzy did not want to be rearrested and fined. The two other defendants, Jonas Yoder and Wallace Miller, attended the trial.

Ball argued that a constitutional question of religious freedom was involved. He emphasized that the religious environment of the community was essential for rearing Amish children. John A. Hostetler, who is an expert witness on Amish society and a sociologist and anthropologist of Temple University, testified that compulsory high school attendance would result in the destruction of the Old Order Amish church community as it exists in the United States today and added that the application of compulsory school laws to the Amish was 'secondary persecution.' An expert witness on education, Donald Erickson, professor of education at the University of Chicago, stated that the public school benefited the majority of the children but it was a failure in providing for religious or ethnic minorities. Erickson added that the Amish who had little unemployment, delinquency and divorce in their community did

a better job of educating than non-Amish. The local sheriff, Wilbur E. Deininger, testified that no criminal charges had been filed against the Amish. The local director of the Welfare Department, Ray F. Kaskey, also testified that no Amish received any form of welfare payments and that none of them was a burden to the taxpayers.

Ball proved that the textbook of New Glarus High School was not suitable for the Amish religion and the public school also had a lucrative motive for the enrollment of the Amish children. Kenneth J. Glewen, the New Glarus school superintendent, admitted under cross examination that his school district lost \$18,000 in state aid without the 37 Amish children. Glewen recounted that the theory of evolution—anathema to the Amish—was included in the textbooks in New Glarus High School. He also testified that the public high school encouraged dances and competitive sports and that they had to teach moral values without reference to God or the Ten Commandments.

Ball approved of the adequacy of the Amish education. Hostetler testified that on the Iowa Basic Skills Test the Amish compared favorably to the norm for children who are non-Amish and that I.Q. performances were above the norm. Minnie Weaver, a teacher at the Amish Plain View school, recounted that she taught arithmetic, English, spelling, reading, geography, and social studies and that classes lasted six and a half hours, five days a week.

On August 15, 1969 Judge Roger L. Elmer rendered his opinion that the Amish were guilty. Elmer stated that the court acknowledged that their religious liberty had been violated, but he added that there was a superior state interest in forcing the children to attend school. Defendants were fined \$5 each, but costs were waived. The county court would be inclined to find the Wisconsin statute unconstitutional if the school requirement concerned only adult members of the Amish. The court valued the rights of the children in the matter of education over religious practice.

Following the defeat in Green County Court, Ball, with the support of the NCARF, appealed to the Wisconsin Court of Appeals, where the former ruling was followed in a perfunctory way.

#### **4. The Wisconsin Supreme Court**

Ball appealed this case to the Wisconsin Supreme Court where the lower court's ruling was reversed (*State v. Yoder*) on January 11, 1971. Chief Justice E. Harold Hallow stated that there was not such a compelling state interest in



two years high school compulsory education as would justify the burden it placed upon the appellants' free exercise of their religion, though he acknowledged that education was a subject within the constitutional power of the state to regulate. By a vote of 7 - 1 the court favored the Amish. The only dissenting judge was Judge Hefferman, who was again the only liberal judge on the court, contrary to many people's expectations that conservative judges would be less supportive of the Amish.<sup>26</sup> Hefferman stated that many young Amish voluntarily left their community each year and were therefore forced to make their way in the world. His view was that the children had rights of their own. The ruling acknowledged the predominance of freedom of religion as provided in the U.S. Constitution over state laws. The Amish children are exempted from schooling beyond the eighth grade. The Wisconsin Supreme Court ruling was the first case the Amish had ever won.

A month later, on February 15, 1971, State Attorney General Robert W. Warren stated that Wisconsin would appeal the decision by the Wisconsin Supreme Court to the United States Supreme Court. The United States Supreme Court decided to hear the case.

## **5. The United States Supreme Court**

On December 15, 1972 the Supreme Court unanimously decided that Amish children should be exempted from compulsory high school education (*Wisconsin v. Yoder*).<sup>27</sup> The Supreme Court refined the balance of state interests against claims of religious freedom based on the free exercise clause. The court acknowledged that 'high school attendance was contrary to the Amish religion and way of life and that they would endanger their own salvation and that of their children by complying with the law.'<sup>28</sup> The court, for the first time, made the constitutional ruling that 'application of the compulsory school attendance law to them violated their rights under the Free Exercise Clause of the First Amendment, made applicable to the State by the Fourteenth Amendment.'<sup>29</sup>

Chief Justice Warren E. Burger delivered the majority opinion of the court, in which Justice William J. Brennan, Justice Potter Stewart, Justice Byron R. White, Justice Thurgood Marshall, and Justice Harry A. Blackmun consented. Burger cited John Hostetler's testimony that 'the modern high school is not equipped, in curriculum or social environment, to impart the values promoted by Amish society,'<sup>30</sup> though he recognized that the state has an interest in the

education of its youth. The state argued that education prepares individuals to be self-reliant and self-sufficient. The court held that forgoing one or two additional years of compulsory education would not impair the physical or mental health of the child, or the child's ability to fulfill the duties of citizenship

Justice Stewart filed a concurring minority opinion, in which Justice Brennan joined. Stewart recounted that 'this case did not involve any questions regarding the right of the children of Amish parents to attend public high schools'<sup>31</sup>. Only one of the children, Frieda Yoder, testified that her religious views were opposed to high school education. The court did not see the testimony of the other children concerning the religious beliefs of the parents and the children.

Justice White filed a concurring opinion, in which Brennan and Stewart joined. White noted evidence that 'many children desert the Amish faith when they come of age.'<sup>32</sup>

Justice William O. Douglas dissented in part. Douglas recounted that 'the children should be entitled to be heard'<sup>33</sup> and that 'the education of the child is a matter on which the child will often have decided views.'<sup>34</sup> He argued that 'It is the student's judgment, not his parents'<sup>35</sup>, that is essential under the Bill of Rights.

The court found that the sincerity of the Amish faith was uncontested but that there was a potential adverse impact of the state requirement. The state's valid interest in education has already been largely satisfied by the eight-year elementary education. Four justices, however, stated reservations regarding the rights of the children in the matter of education. Since the children were not parties to the litigation, the court simply refused to consider the rights of the children in this case.

Since the Supreme Court ruling, many states have accepted the right of the Amish to build their own schools and the right to withdraw from public school after completing the eighth grade. There are presently 726 Amish schools in 21 states.<sup>36</sup>

## Conclusion

Cases concerning religion are some of the most difficult to be decided in the

courts. The courts have been reluctant to protect religious practices to avoid supporting religions. However, many religious practices denied in the courts are those of religious minorities. If the distinction between religious practices and religious beliefs were strictly adhered to by the courts, religious minorities would be forbidden to do any religious activity. Even though they are free to believe as they wish, the prohibition of religious activities, in some cases, would result in the destruction of religious minorities. A fair balance between religious practices and the public interest is essential in judicial decisions.

The NCARF made a remarkable contribution to the *Yoder* case. The NCARF raised the funds and carried the case on behalf of the Amish because the Amish faith forbids litigation in court. Attorney Ball was successful in convincing the judges of the sincerity of the Amish. Against the reservations by some judges regarding the drop-out rate of Amish children from the Amish church, a growing number of Amish children join the Amish church. The drop-out rate has decreased from 20 percent to 10 percent in the past 20 years. The Amish churches are growing at a remarkable rate with fewer children leaving the community and with more children joining them from their large families. The Amish have functioned successfully and legally in their own educational framework since the *Yoder* case. The Amish will continue to exercise their religious beliefs into the next generation.

## Notes

- 1 John A. Hostetler, *Amish Society* (Baltimore and London: The Johns Hopkins University, 1963), p. 281. [Fourth Edition, 1993]
- 2 Leonard Gross, 'The Unfolding of the Amish Idea,' (in press). This Amish idea was obtained from a personal interview with Eli E. Gingerich, an Old Order Amishman of Middlebury, Indiana.
- 3 John A. Hostetler and Gertrude Enders Huntington, *Amish Children* (New York: Holt, Rinehart and Winston, 1992), pp.8-14.
- 4 Gross, 'The Unfolding of the Amish Idea.'
- 5 John A. Hostetler, *Educational Achievement and Life Styles in a Traditional Society, the Old Order Amish* (U.S. Department of Health, Education, and Welfare, 1960), p.102.
- 6 Thomas J. Meyers, 'Education and Schooling,' in Donald B. Kraybill, ed., *The Amish and the State* (Baltimore: The Johns Hopkins University, 1993), pp.87-88.
- 7 Donald A. Erickson cites the reported speech of county officials in Iowa in 'The Plain People vs. The Common Schools,' *Saturday Review*, November 19, 1966, P.86 as 'We are going to assimilate these people,

## A School Controversy

whether they want to be assimilated or not!'

- 8 *Ibid.*
- 9 William C. Lindholm, 'The National Committee for Amish Religious Freedom,' in Donald B. Kraybill (ed.), *The Amish and the State* (Baltimore and London: The Johns Hopkins University Press, 1993), p.115.
- 10 Lindholm, 'The National Committee for Amish Religious Freedom,' p.113; Joe Wittmer, 'The Amish Schools today,' *School & Society*, April, 1971, p.228.
- 11 John Morton, who grew up in Amish country, stated in his article, 'All Amish Lost A Little Ground In the Decision,' *The National Observer*, October 30, 1967, that many people who lived near the Amish might be intrigued by the peculiar way of Amish life, but never bothered to find out the core value of the Amish. Rather, the Amish were just part of the local scenery.
- 12 A work permit is granted to a family in dire financial need by the Department of Public Instruction in Pennsylvania.
- 13 Donald A. Erickson, 'The Persecution of LeRoy Garber,' *School Review*, November 1969, p.82.
- 14 Erickson, 'The Persecution of LeRoy Garber,' p.85.
- 15 The vocational training program for children who have completed the eighth grade was approved in Pennsylvania in 1955. In this program, Amish children study English, arithmetic, spelling, and subjects related to agriculture at weekly three-hour classes held by an Amish teacher. The children also perform farm and household activities under parental guidance and submit daily journals of their work activities on the farm and home to the Amish teacher. Attendance records are submitted to the state. Amish teachers are not required to be certified by Pennsylvania.
- 16 *The National Observer*, October 30, 1967.
- 17 The Amish do not defend themselves, or hire lobbyists. Therefore, they have been very disadvantaged in preserving their religious freedom. The school conflict in Iowa during the mid-1960 attracted wide public attention. In order to provide legal assistance and counsel to the Amish regarding church-state conflicts, Lutheran pastor William C. Lindholm organized the National Committee for Amish Religious Freedom in 1967. Members included professors, attorneys, Christian and Jewish religious leaders.
- 18 Albert N. Keim, 'From Erlanbach to New Glarus,' in Albert N. Keim (ed.), *Compulsory Education and the Amish* (Boston: Beacon Press, 1975), p.2.
- 19 *Des Moines Sunday Register*, January 30, 1966.
- 20 *Ibid.*
- 21 Both the Old Order Amish and Old Order Mennonites share the same faith in education.
- 22 William C. Lindholm, 'The National Committee for Amish religious Freedom,' in Donald B. Kraybill (ed.), *The Amish and the State* (Baltimore and London: The Johns Hopkins University Press, 1993), pp.113-117.
- 23 William B. Ball, 'Building a Landmark Case: Wisconsin v. Yoder,' in Albert N. Keim (ed.), *Compulsory Education and the Amish* (Boston: Beacon Press, 1975), p.115.
- 24 Ball, 'Building a Landmark Case,' pp.115-116.
- 25 Ball, 'Building a Landmark Case,' p.116.
- 26 William C. Lindholm, 'National Committee for Amish Religious Freedom,' p.119.
- 27 Two justices, Hugo Black and John Harlan, died and no new justices had been nominated at the ruling of *Wisconsin v. Yoder*.

- 28 *The Amish School Decision: Full text of the U. S. Supreme Court's decision in Wisconsin v. Yoder, together with dissenting and concurring opinions and footnotes* (Washington: Capital Church Publishers, n.d.).
- 29 *Ibid.*
- 30 *Ibid.*
- 31 *Ibid.*
- 32 *Ibid.*
- 33 *Ibid.*
- 34 *Ibid.*
- 35 *Ibid.*
- 36 John A. Hostetler and Gertrude E. Huntington, *Amish Children*, p.5.

This research was supported by the Takasaki City University of Economics Research Grant Program. Appreciation is extended to Dr. Leonard Gross and Dr. John D. Roth, who provided me with various information on the school controversy in the Archives and Mennonite Historical Library, Goshen College. Special thanks go to again Dr. Leonard Gross and Professor George Ricketts for their invaluable suggestions and advice for an earlier version of this paper.

